EXHIBIT "C"

Dockets.Justia.com

Kalcheim | SALAH
Mitch Kalcheim [SBN: 175846]
Amber S. Healy [SBN: 232730]
2049 Century Park East
Suite 2150
Los Angeles, CA 90067
T: (310) 461-1200
F: (310) 461-1201

Attorneys for Plaintiff

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

JAN 1 2 2006

John A. Clarke, Executive Officer/Clerk
By ________________, Deputy
D. GILES

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

SARA RUBENSTEIN, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. JAMES FREY, RANDOM HOUSE, INC. and Does 1-300 Defendants.	Case No. BC345856 CLASS ACTION COMPLAINT FOR: 1. Violation of the Consumers Legal Remedies Act, Civ. Code §1750 et seq., 2. Violation of the Unfair Competition Law, Bus. & Prof. Code §17200 et seq.; 3. Violation of the False Advertising Statute, Bus. & Prof. Code §17500 et seq.

Plaintiff Sara Rubenstein, by counsel and for her Class Action Complaint ("Complaint") against Defendants, James Frey and Random House, Inc, and Does 1 through 300, hereby allege upon personal knowledge as to her own acts, and upon information and belief (based on the investigation of her counsel) as to all other matters, as to which allegations they believe substantial evidentiary support will exist after a reasonable opportunity for further investigation and discovery, as follows:

aware that they have been duped by Defendants.

8. Due to Defendants' scheme, and consumers inability to determine the truth as to the falsity of Defendants' claims and representations regarding the book, Plaintiff and Class members were fraudulently induced to purchase the Book.

9. California's consumer protection laws are designed to protect consumers from this type of false advertising and predatory conduct at issue in this action. Defendants' unfair and deceptive course of conduct is common to all purchasers of "A Million Little Pieces."

10. Defendants' scheme to deceive and defraud consumers violated (a) the Consumers Legal Remedies Act ("CLRA"), Civ. Code §1750 et seq., specifically Civ. Code §1770(a) (5) and (b); the Unfair Competition Law, Bus. & Prof. Code §17200 et seq.; including the False Advertising Statute, Bus. & Prof. Code §17500 et seq. ("UCL")

11. Consequently, by this Complaint and on behalf of the consumers of the Book, Plaintiff and members of the Class she seeks restitution to compensate them for their monetary losses, disgorgement of all of the Defendants' wrongfully earned profits and other gains from their scheme.

12. Pursuant to the CLRA on January 12, 2006, Plaintiff gave notice to Defendants of her intention to file an action for monetary damages under *California Civil Code* § 1750 et seq., unless Defendant correct, repair, replace, or otherwise rectify the consumer fraud resulting from its conduct.

II. PARTIES

13. Plaintiff, Sara Rubenstein, is an individual who resides in the County of Los Angeles. Plaintiff is a consumer who bought and read the Book during the summer of 2005.

14. Plaintiff made her purchase in reliance upon Defendants' deceptive, fraudulent and false representations that the Book was a non-fiction literary work. Plaintiff would not have purchased the Book had Defendants truthfully disclosed that many of the events portrayed in the Book were fiction. Plaintiff seeks relief in her individual capacity and she seeks to represent a Class consisting of all other consumers who purchased the Book from its publication in 2003 to

January 10, 2006, the date when it was first publicly disclosed that many of the events within the Book were fictional or wildly exaggerated.

15. Defendant James Frey, is the author of "A Million Little Pieces." During the Class Period, Defendant Frey conducted the illegal scheme complained of in the County of Los Angeles.

16. Defendant Random House is the publisher of the Book. Defendant Random House did business throughout the County of Los Angeles, the State of California. During the Class Period, Defendant Random House conducted the illegal scheme complained of here in the County of Los Angeles.

17. The true names and capacities (whether individual, corporate, associate, or otherwise) of the Defendants that are identified as Does 1 through 300, inclusive, and each of them, are unknown to Plaintiff, who therefor sue said "Doe" Defendants by such fictitious names. Plaintiff is informed and believe and thereon allege that each of the Defendants fictitiously named herein as "Doe" is legally responsible in some actionable manner for the events and happenings hereinafter described, and thereby proximately caused the injuries and damages to Plaintiffs and Class members, as alleged herein. Plaintiffs will seek leave of Court to amend this Complaint to state the true names and capacities of said fictitiously named Defendants when the same have been ascertained.

18. Plaintiff is informed and believe and thereon allege that Defendants (and each of them), including Does 1 through 300, inclusive, were the agents, servants, employees, successors, assignees, transferees and/or joint venturers of their co-Defendants, and each of them was, as such, acting within the course, scope and authority of said agency, employment and/or joint venture and was acting with the consent, permission and authorization of each of the remaining Defendants, and that each and every Defendant when acting as a principal, was negligent in the selection and hiring of each and every other Defendant as an agent, employee and/or joint venturer. All actions of each Defendant, as alleged herein were ratified and approved by every other Defendant or their officers or managing agents.

III. JURISDICTION AND VENUE

19. This Court has subject matter jurisdiction over this class action pursuant to Bus. & Prof. Code §§ 17203, 17204 and 17535, and Civ. Code § 1780. This Court may properly exercise personal jurisdiction over the parties because (a) Plaintiffs and the members of the Class submit to the jurisdiction of this Court; (b) Defendant Frey systematically and continuously does business in this County; and (c) Defendant Random House systematically and continually does business in the County of Los Angeles.

20. Venue is proper in this Court pursuant to Bus. & Prof. Code §§ 17204 and 17535, Civ. Code §§ 395 and 395.5, and Civ. Code § 1780(c) because Plaintiff resides in the County of Los Angeles and Defendants systematically and continually do business in this County.

21. Federal subject matter jurisdiction does not exist over the claims for relief asserted in this Complaint.

IV. CLASS ACTION ALLEGATIONS

22. This action may properly be maintained as a Class Action pursuant to Code Civ. Proc. § 382, Civ. Code §§ 1752, 1780 and 1781, and Rules 1850-1861 of the Rules of Court.

23. Plaintiff brings this action as a Class Action on behalf of all purchasers of the Book who reside in California or who purchased the Book in California during the Class Period.

24. The Class is composed of thousands of residents of Californians including Plaintiff, and joinder of everyone is impracticable. Although the exact number of Class members is presently unknown, the Class will number in at least thousands. During the Class Period, the Book was sold throughout the State of California in bookstores, supermarkets and convenience stores, as well as by retailers on the Internet. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of the claims of Plaintiffs and other Class members in this action will provide substantial benefits to the parties and this Court.

25. There exists a well-defined community of interest in the questions of law and fact presented by this controversy. These questions of law and fact common to Plaintiffs and Class

members predominate over questions which may affect only individual members, if any, because Defendants have acted on grounds generally applicable to the entire Class. Among the questions of law and fact common to the Class are the following:

(a) Whether Defendants' scheme to utilize false and deceptive statements violates the CLRA, the UCL and Section 17500;

(b) Whether Defendants made false claims regarding the Book;

(c) Whether Defendants' misrepresentations were false and misleading advertising; and

(d) The amount of restitution that Plaintiffs and members of the Class should be awarded.

26. Plaintiff is a member of the Class. Plaintiff's claims are typical of the claims of the other Class members because Plaintiff and all Class members were injured by the same wrongful acts and practices in which Defendants engaged as alleged herein.

27. Plaintiff will fairly and adequately protect the interests of the Class. The interests of Plaintiff are coincident with, and not antagonistic to, those of the Class members. In addition, Plaintiff has retained attorneys who are experienced and competent in the prosecution of complex and class litigation. Neither Plaintiff nor their attorneys have any conflict in undertaking this representation.

28. A class action is superior to the alternatives, if any, for the fair and efficient adjudication of the controversy alleged herein because such treatment will permit a large number of similarly situated persons residing throughout California to prosecute their common claims in a single forum simultaneously, efficiently, and without duplication of evidence, effort, and expense that numerous individual actions would engender. This action will result in the orderly and expeditious administration of Class claims. Uniformity of decisions will be assured, thereby avoiding the risk of inconsistent and varying determinations.

29. Because the injuries suffered by individual Class members or the amount of restitution or disgorgement to each class member may be relatively small, the expense and burden of individual litigation make it virtually impossible for the members of the Class effectively to seek redress individually for Defendants' alleged wrongful conduct.

30. Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action.

31. Common questions of law and fact predominate in this case, and a class action is the only appropriate method for the complete adjudication of this controversy for the following reasons, among others:

(a) The individual amounts of restitution involved, while not insubstantial, are generally so small that individual actions or other individual remedies are impracticable and litigating individual actions would be too costly;

(b) The costs of individual suits would unreasonably consume the amounts that would be recovered;

(c) Individual actions would create a risk of inconsistent results and would be unnecessary and duplicative of this litigation; and

(d) Individual actions would unnecessarily burden the courts and waste precious judicial resources.

31. Notice to the members of the Class may be accomplished cheaply, efficiently and in a manner best designed to protect the rights of all Class members.

DEFENDANTS' SCHEME TO DEFRAUD CONSUMERS

32. Defendants have represented, expressly or by implication, including through advertisements disseminated throughout the County of Los Angeles, the State of California and the United States that "A Million Little Pieces" is a non-fiction literary work, and a "genuine account" when in fact many of the key accounts within the Book are wholly fabricated or wildly embellished. For example, in relation to a driving while intoxicated arrest Defendant Frey writes, "Got first DUI. Blew a .36, and set a County Record. Went to Jail for a week." However, the police report from the incident tells a different story. Just after midnight on June 8, 1988, after executing a traffic stop, in which Frey was the driver, the officer noticed Frey's eyes were glassy, and he "appeared dazed." After failing a series of field sobriety tests, Frey was arrested for drunk driving and for failure to carry his driver's license. He was transported to the Sheriff's